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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. | | | | |
|---|--------------------|--------------------------|---|------------------|---------------|------------------|-------|--|
| 10/550,745 | 07/06/2006 | Reinhold Hermann Stammel | 44950-78606 | 6070 | | | | |
| 76799 PAMELA A. KACHUR 950 W 450 S BLDG. 4 COLUMBUS, IN 47201 | 7590 02/19/2009 | | <table border="1"><tr><td>EXAMINER</td></tr><tr><td>AVERY, BRIDGET D</td></tr></table> | | EXAMINER | AVERY, BRIDGET D | | |
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/550,745

Applicant(s)

STAMMEL ET AL.

Examiner

BRIDGET AVERY

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 08 May 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-18 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-18 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 23 September 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-85/06)
Paper No(s)/Mail Date 9/23/05, 1/3/06 & 10/6/06
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Inventor's Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

1. Claims 1-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
2. Claim 1 recites the limitation "the motor" in line 3. There is insufficient antecedent basis for this limitation in the claim. According to applicant's disclosure and drawing, the motor (M) is the engine. Therefore, for the purposes of examination, the recitation of motor will be treated as "engine".
3. In claim 1, on line 3, the phrase "and/or" is vague and indefinite.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-4, 11, 13, 17 and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Shimada (US Patent 3,942,599).

Shimada teaches a motor vehicle including a combustion engine (1), a gearbox, an exhaust system (2, 8) and an exhaust system bracket (21a) for fastening the exhaust system, characterized in that the exhaust system (2, 8) is fastened to the gearbox (5, 6)

through the exhaust system bracket (21a) which comprises a supporting element (11, 11a) in the form of a plate holder with at least two band-like, elastic plates (11, 11a) which are superimposed so as to form a stack and are able to move relative to each other on at least a part of their length. The supporting element has an angular structure as seen in the longitudinal section. The supporting element, as seen in the longitudinal section, has a twofold angular structure in the form of an offset step, as shown in Figure 7. The supporting element, as seen in the longitudinal section, has a fourfold angular structure in the form of two offset steps which are arranged mirror-inverted to each other, as shown in Figure 7. The plates have a smooth surface. The plates have a structured surface. The supporting element is fastened to the exhaust system by means of a console. Re claim 18, see Figure 1.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 5-10, 12 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shimada ('599).

Shimada teaches the features described above.

Shimada lacks the teaching of a helical structure, austenitic material, ferritic material, spring steel, plates made of different materials, plates having a different thickness, plates having a rough surface, plates fastened to each other by screwing,

welding or a form-fitting and/or force-fitting connection, a flanged plate, and the teaching of three, four or five plates.

The provision of a helical structure or a flanged plate represents a change in shape which is well within the level of ordinary skill in the art. The use of old and well known materials would have been obvious to one having ordinary skill in the art. The provision of well known fastening methods such as screwing and welding would have been obvious to one having ordinary skill in the art. The provision of three, four, or five plates is an obvious duplication of parts which is well within the level of ordinary skill in the art. Where a claimed improvement on a device or apparatus is no more than "the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement," the claim is unpatentable under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d 1509, 1518-19 (BPAI, 2007) (citing *KSR v. Teleflex*, 127 S.Ct. 1727, 1740, 82 USPQ2d 1385, 1396 (2007)). Accordingly Applicant claims a combination that only unites old elements with no change in the respective functions of those old elements, and the combination of those elements yields predictable results; absent evidence that the modifications necessary to effect the combination of elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a). *Ex Parte Smith*, 83 USPQ.2d at 1518-19 (BPAI, 2007) (citing *KSR*, 127 S.Ct. at 1740, 82 USPQ2d at 1396. Accordingly, since the applicant[s] have submitted no persuasive evidence that the combination of the above elements is uniquely challenging or difficult for one of ordinary skill in the art, the claim is unpatentable as obvious under 35 U.S.C. 103(a) because it is

no more than the predictable use of prior art elements according to their established functions resulting in the simple substitution of one known element for another or the mere application of a known technique to a piece of prior art ready for improvement.

Conclusion

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hasetoh et al. shows a structure for mounting powertrain of vehicle.

Uegane et al. shows an exhaust pipe layout structure for vehicles.

Aiba shows a method for mounting an exhaust system in a motorcycle.

Uegane et al. shows a vibration absorbing apparatus for exhaust system of engine.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIDGET AVERY whose telephone number is (571)272-6691. The examiner can normally be reached on Monday-Thursday from 8:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis, can be reached on 571-272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only.

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For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Christopher P Ellis/
Supervisory Patent Examiner, Art
Unit 3618

/Bridget Avery/

Examiner, Art Unit 3618